

ESTATE TAX CASE

Dissenting Opinion By Justice Perry.

Justice Perry takes a turn at dissenting in the tax appeal of John II Estate, Ltd. A majority opinion written by Chief Justice Frear, signed by Justice Galbraith with the author overrules the grounds of appeal but modifies the assessment.

The taxpayer's return was for 8000 acres of kula land, ahupuaa of John II, pasture and water right, at \$80,000; 836 acres of kula land, same description, at \$360, and 5000 acres of forest land, claimed to be exempted as a forest reservation under Chapter 61, Civil Laws 1897. The assessor accepted the valuations given, but added the assessment of water privileges Waipio forest land, leased to Oahu Sugar Co. for \$5000 a year, at \$64,000. The assessments of the two pasture tracts were raised the year before, by reason of the rental mentioned, from \$44,180 to \$53,360, the year before that the assessment of the 5000 acre tract having been raised from \$24,000 to \$40,000.

Under the circumstances the majority concludes "that the most that can be done is to place the valuation of the forest land at the amount at which the Tax Appeal Court placed it the year before on the evidence then produced, there being nothing to show that the value has changed meanwhile."

The law of the case, as contained in the syllabus, is as follows:

"A granted to B for a term of years, at an annual rental of \$5000, the right to enter upon three certain parcels of land, to dig tunnels and ditches, to construct dams, reservoirs, flumes, pipe-lines and electrical and other power works and to take all water found and which might thereafter be found on the lands named. The lessee used the land in accordance with the rights so granted. The lessor returned one of the tracts as exempt from taxation under C. L. Sec. 897, claiming that it was fenced and that cattle were excluded therefrom. Held, that such tract was not exempt, as 'other use' was made of it.

"Where the language of a memorandum of assessment is ambiguous, the construction placed upon it by the parties before the Tax Appeal Court and by that court itself will prevail."

Justice Perry regards the assessment of the property in the light of being duplicate taxation, although like the majority he holds the forest land is not exempt. All the conditions for exemption were not observed. He maintains that "the assessment should be such that the aggregate of the assessments on the three lands shall not exceed their total cash value," and concludes thus:

"The appeal should be sustained, the decision of the tax court reversed and the assessment of \$64,000 on the 'water privilege' set aside. The assessor should now assess the 5000 acres of forest land."

THE EWA ROBBERY.

Three witnesses were examined in the Ewa road robbery case before Judge De Bolt when, in the middle of yesterday afternoon, the prosecution rested. A pistol had been placed in evidence. Mr. Matthews moved that the defendant Lee Jim be discharged on various grounds taken down by the stenographer. At 3:54 the jurors were excused until 9:30 this morning, and Mr. Matthews argued in support of his motion. The court's ruling was reserved until today.

PEARL HARBOR DREDGING.

In the case of Clark & Henry vs. H. Hackfeld & Co., Ltd., and Castle & Cooke, Ltd., a S. Hartwell yesterday filed a notice to defendants to admit the following facts:

"That the plaintiffs Clark & Henry bid for, obtained and completed the contract for dredging the entrance or channel into Pearl Harbor in the Territory of Hawaii, referred to in the resolutions in the plaintiffs' complaint for doing the necessary work to be performed to make the said entrance 200 feet wide at the bottom and 30 feet deep and that the performance and completion of the said work and contract were accepted by the United States Government."

In case of refusal or neglect to admit the foregoing within 48 hours, it is notified, the cost of proving the facts by depositions of witnesses residing without the Territory will be required to be paid by the defendants unless the judge presiding at the trial shall certify that the refusal was reasonable. Mr. Hartwell, in an affidavit, names the absent witnesses as Lieut. Col. Heuer, now stationed in California; Gen. Gillespie, chief of the Corps of Engineers of the United States Army, now stationed in Washington; L. Thompson, inspecting officer for the U. S. Government, and Clark & Henry in California. The reasons given for claiming the admission of defendants are that Castle & Cooke, Ltd., has paid to the plaintiffs \$17,575.49 in discharge of its obligation under resolution of the Ewa Plantation Co., and fulfillment of its guarantee save and except the joint liability with H. Hackfeld & Co., Ltd., under the resolution of the Ewa Plantation Co.; that Castle & Cooke, Ltd., has filed a confession of judgment in respect of the liability for two-thirds of the amount claimed; that H. Hackfeld & Co., Ltd., has recently admitted that the work had been done under the contract of the plaintiffs and that the cost of the same was \$17,575.49.

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ly reason for not paying its one-third was that Pearl Harbor was not decided to be open for commerce.

It is further declared by Mr. Hartwell "that there is now on file in the office of the Superintendent of Public Works of the Territory of Hawaii official correspondence of Hon. H. E. Cooper, now one of the attorneys of H. Hackfeld & Co., Ltd., then Superintendent of Public Works, with United States Army, officers showing that the work mentioned in said contract has been done and completed."

H. Hackfeld & Co., Ltd., by its attorneys, Kinney, McClanahan & Cooper, promptly filed a refusal to admit the stated facts.

COURT NOTES.

In the foreclosure of mortgage of H. Hackfeld & Co., Ltd., vs. W. C. Achi, Kapiolani Estate, Ltd., W. R. Castle and J. M. Monsarrat, defendant Monsarrat answers with admission of the allegations and consent to the prayer.

Before Judge Gear plaintiff in the assumpsit suit of Oriental Life Insurance Co., Ltd., vs. Wu Shing consented to voluntary nonsuit. W. R. Castle and W. L. Whitney for plaintiff; C. W. Ashford for defendant.

Ernest Pardon has been granted leave by the Supreme Court to withdraw his appeal from Judge De Bolt's decree in the matter of the estate of August Kraft, deceased.

Francis R. Day by his attorneys, Smith & Lewis and Louis J. Warren, demurs as a defendant in the suit of W. H. Pain vs. Paul Muhendorf and others, declaring that he never was a copartner with the plaintiff.

Judge Gear's jury was in attendance yesterday, but eighteen cases were called without finding one in which the attorneys were ready for trial.

THE EWA OUTRAGES

The Trial in Progress. Godfrey-Kidwell Decision.

(From Thursday's Advertiser.)

Lee Jim, Chew Hoy, Lee Yok and Loy Yin were placed on trial before Judge De Bolt yesterday, under indictment for robbery in the first degree. The case has relation to the outrages committed on the Ewa road last year. W. S. Fleming, Assistant Attorney General, appeared for the prosecution; H. G. Middleitch for Loy Yin, J. A. Matthewsman for Lee Jim and Henry Hogan for Chew Hoy and Lee Yok. Through challenges the jury panel was exhausted in the morning and a special venire was issued for 15 talemen, returnable at 2:30 p. m. After the return was made the following jury was found satisfactory: C. J. Ludwigsen, Percy Lishman, H. R. Macfarlane Jr., Henry P. Kaohi, G. Kealohapuaole, W. M. Buchanan, C. J. Falk, James Bicknell, John Coffee, Jessie Andrade, J. R. Galt and G. D. Mahone. Only one witness has thus far been called.

KIDWELL WINS OUT.

A majority opinion of the Supreme Court by Chief Justice Frear and Justice Perry, the latter being the writer, denies complainant's motion for a rehearing of the case of Frank Godfrey, as trustee for Thomas Metcalf, against John Kidwell. W. A. Whiting and C. F. Clemons appeared for complainant; Robertson & Wilder for respondents. Justice Galbraith dissents on the grounds stated in his dissenting opinion to the decision that the majority previously rendered in the same case.

The main contention of complainant all through was that Thomas Metcalf, while in his minority, made a sale of property to Kidwell which he confirmed after coming of age and that such sale was made under a misapprehension that the grantor owned but a one-half interest in the property. In its opinion the Supreme Court majority says:

"Our finding was that the deed was not executed under a mistake as to the facts on the part of either party,—that while both doubtless supposed that in all probability the grantor's interest would prove to be not more than one-half, still they speculated, knowing the deed to be operative to convey all the grantor's interest, whatever it might be, and took their chances as to all over as well as to all under one-half."

YOUNG NAP HELD UNDER THE WRIT

Judge Dole rendered a written decision yesterday on the motion to quash the writ of ne exeat in the bankruptcy case of Hoffschlaeger & Co., Ltd., vs. Young Nap, alias Young Lap, doing business under the name of Young Hop Chan. All the objections with a slight exception are overruled and the motion to quash is denied. The claim of the plaintiff is for a balance due upon goods sold and delivered of \$2664.20.

When the respondent came to Honolulu recently from Waiakoa, Kula, Maui, with his family and secured passage to China for himself and them in the steamer Siberia, the writ was served after they had gone aboard and just before the steamer sailed. They all came ashore and the respondent was put under a bond of \$1000. This was later reduced by Judge Dole to \$500. Thayer & Hemenway are attorneys for the petitioner, and C. W. Ashford and E. M. Wilson for the respondent.

ON to Australia.

Frank Halstead left on Saturday on the steamer Mauna to Australia, where he will look over the ranching prospects with a view to purchasing a ranch and sheep range.

THE SESSION WILL NOT CLOSE BEFORE MONDAY

Senate Adjourns Too Early To Get Unpaid Bills. Prospect of More Trouble Over the Current Expense Bill in House.

The Legislature cannot now complete its work before Monday. Through a misunderstanding the Senate adjourned yesterday afternoon before receiving from the House the bill providing for the payment of unpaid bills, and consequently that measure cannot be given the required three readings before Monday.

The House reconsidered its previous action in passing the current expense bill and made a number of amendments, relating to the hospitals, in conformity with the suggestions of Governor Carter. The House also refused to pass the bill requiring litigants to pay costs of court, and as a consequence the current expense bill will have to be again amended. It is likely to be reconsidered today and the appropriations for the courts increased.

In the Senate the Depository bill, which Senator Achi regarded as the best measure of the session, was laid on the mortuary shelf after dying hard. At the instance of the Governor, the Salary bill was reconsidered for amendments deemed necessary after the Supreme Court's decision of the test case. Then for the third time it passed third reading on a call of the roll. With an amendment offered by Mr. Dickey, the House joint resolution for a County Act Commission went to the judiciary committee. The Sewerage bill loses one champion for two days in the leave of absence granted to Senator Isenberg.

HOUSE

At the opening of the session in the morning the House concurred, on motion of Kellinot, in the Senate amendment of the assessor's bill, limiting the amount of commission to five per cent. There was, but one negative vote on the final passage of the bill.

The Senate bill repealing the treasury note law of 1888 passed first reading.

Representative Kellinot presented a petition from the chairman of the Maui board of supervisors for an appropriation of \$3028.75 to repay the expenses incurred on Maui during ten days of county government.

Senate Bills No. 7 and 8, limiting the old appropriation bills to June 30th, 1904, both passed third reading unanimously and were sent to the governor.

The Senate bill, providing for the payment of expenses of the land registration courts from its receipts passed third reading—25 ayes, 3 noes.

Senate Bill No. 9, providing that litigants pay costs of court was upon motion of Kalama indefinitely postponed.

Mr. Harris moved also a reconsideration of the current expense bill, and then proposed a number of changes in the reading of the hospital items which carried. The Queen's Hospital item of \$12,000 was stricken out, and instead was inserted an item of \$21,000 to be expended under the direction of the Board of Health in the care of indigent sick at Queen's Hospital, Leahi Hospital and the Kapiolani Maternity Home. Long thought persons sick through accident might not be cared for under the appropriation as proposed, but was satisfied by Harris that they would. The Malulani Hospital was given \$3,000 the Hilo Hospital \$4,000 and the Elesee Hospital \$500, all the changes being made by unanimous vote.

Upon motion of Harris, the changes in the expense bill were made to ratify expenditures already incurred under the old appropriation acts. The amendments are the same as made in the Senate to the Salary bill, upon suggestion of Governor Carter. Kumale objected that the action would be "retrospective" but his objection had no weight. The bill was finally passed on third reading by a vote of 23 to 5. It carries appropriations amounting to \$399,559.

AFTERNOON SESSION. The House did not reconvene until

after three o'clock, when Chairman Harris of the Finance Committee presented a report favoring the adoption of the unpaid bills measure. He brought in a number of additional bills, including an item of over \$2,400 for the three banks, being money advanced to defray expense of floating the million dollar loan. The bill was then passed as amended with four dissenting votes.

HOSPITALS AGAIN.

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GARDNER WILDER'S DEATH.

SAN FRANCISCO, April 14.—Gardner K. Wilder, a Honolulu lawyer, died here of pneumonia.



THE LATE GARDNER K. WILDER.

Gardner K. Wilder left Honolulu on the steamer Ventura to join his wife in the East, who had been there for the benefit of her health.

Mr. Wilder was a well known member of the Hawaiian bar and served for some time as judge of the Third and Fourth Judicial Circuits, resigning the latter office on May 15, 1900. At one time under Queen Liliuokalani he received the appointment of Deputy Mayor and later secured a local education at Ann Arbor, Michigan. It was there that he met the lady who afterwards became his wife. He married at Rochester, Michigan, on August 24th, 1892. Mrs. Wilder is a native of that State. Returning to the islands he re-

ceived the appointment of Deputy Attorney General, and held that office under different Attorney Generals in the latter part of Queen Liliuokalani's reign and in the troubles preceding the overthrow.

On the death of Judge Wilcox last year Mr. Wilder was mentioned as a possible successor to the position but later in the year he went to Kona for the purpose of practicing law there.

Mr. Wilder was about forty years of age and was the eldest son of the late William K. Wilder. Besides his wife and a daughter Mr. Wilder leaves three sons, William K. Wilder, Jr., and two daughters, Mrs. W. L. Wilson and Mrs. W. L. Wilson. He was well known in the islands by his legal and literary attainments.

JURY BILL KILLED AGAIN.

Andrade again moved a reconsideration of the vote on the Senate bill taxing court costs to litigants. Kumale raised the point of order that a bill indefinitely postponed could not be considered again at the same session, and quoted the rules of the House, Cushing's Manual and a few other authorities by the yard. Speaker Beckley ruled the point not well taken, and the motion was put and lost, by a vote of 14 to 8.

PAY FOR TYPEWRITING.

Kellinot presented a resolution fixing the compensation for typewriting at not to exceed fifteen cents per folio. It was adopted without a dissenting vote.

Kellinot asked for the return of his petition for defraying the expenses of the Maui county, saying that the lists had been drawn up at great expense, and there was no duplicate. He said that the finance committee had not intended to consider the claim.

"That is somewhat of a slam at me," said Harris, the chairman.

"No, it isn't, only the finance committee didn't consider it an unpaid bill," replied Kellinot.

"The county of Maui is not a department of the government and the bill couldn't be included."

"It was though," replied Kellinot, "County of Maui, Territory of Hawaii."

"No, it wasn't."

"By jove it was," said Kellinot, "the legislature created it."

Kellinot had his petition returned, the incident was closed and the House adjourned until this morning at ten o'clock.

SENATE

Immediately after opening routine yesterday morning, Mr. Kaohi, under suspension of rules, moved to reconsider the nomination of Robert K. Naipo as inspector of election in the 1st precinct of the second district. When he objected the previous day to confirmation of that appointment he was under the wrong impression that Mr. Naipo was a member of the board of registration.

On motion of Mr. Achi, seconded by Mr. Woods, the appointment of Mr. Naipo was confirmed.

VOLE OF THANKS.

Mr. Woods presented a resolution, which was adopted, directing the clerk to communicate with the Honolulu Rapid Transit and Land Company, Limited, thanking it for its kindness in placing cars at the disposal of the Senate for the visit to the Aquarium at Waikiki.

THE GARBAGE BILL.

Third reading of House bill No. 3, relating to cleaning of streets, removal of garbage, etc., was called as first order of the day. On motion of Mr. Kahuokalani the bill was referred again to the Judiciary committee.

THE BONDS BILL.

Senate bill No. 17, relating to the sale of bonds, was taken up with the favorable report of the Finance committee. It passed third reading by the unanimous vote of the thirteen members attending this session.

THE DEPOSITARY BILL.

Senate bill No. 15, relating to depositing of public money in banks, was called on second reading.

Mr. Kahuokalani moved reconsideration of a vote adopting the report of the Finance committee which recommended deferring the measure to next regular session. Between him and the interpreter a mistake was made in designating the bill as No. 17. When the error was pointed out he renewed his motion with the correct number, and Mr. Achi raised the point of order that a motion to reconsider a matter could not be repeated.

Mr. Isenberg deprecated the action of the objector as taking advantage of the mistake of a member. For the sake of economy they were not having any bills printed this session, so that it was easy to make mistakes.

Mr. Dickey moved to refer the bill to the Judiciary committee. Mr. Isenberg to adopt the Finance committee's report tabling the bill.

There was another point of order as to precedence of motions. Mr. Dickey claiming that the motion to commit should come first, as the other motion was not to table the bill but to adopt a report. The chair ruled that the latter having the practical effect of tabling the bill should be put first.

The report was adopted, laying the bill on the table, by seven votes.

MALICIOUS INJURY.

House bill No. 5, relating to the misdemeanor of malicious injury, was referred on second reading to the Judiciary committee.

COUNTY COMMISSION.

House joint resolution No. 1, to provide for a commission to draft a County Act, came up for consideration. Mr. Dickey, seconded by Mr. Wilcox, moved to amend paragraph 3 to read as follows:

"That a commission of five members be appointed by the Governor, the President of the Senate to nominate two and the House of Representatives to nominate two, to draft a County Act to be presented at the regular session of the Legislature. The pay of commissioners shall be fixed at the next session of the Legislature and be commensurate with the amount of actual work done by each. No expenses shall be incurred under this resolution without the approval of the Governor."

Mr. Achi moved that the resolution and amendment be referred to a committee. They could not bind the next Legislature. He favored a special committee with Mr. Dickey as chairman.

Mr. Paris did not believe in a County Act Commission. It would only leave the work for the Legislature to do over again, which was the result from the former commission.

The whole matter was referred to the Judiciary committee.

THE SALARY BILL.

Mr. McCandless moved reconsideration of the House bill No. 1. The decision of the Supreme Court in the test case made all the amendments null and void. The bill was referred to the Judiciary committee.

HIS NERVE WAS STRONG

Japanese Is Sentenced For Double Act of Forgery.

Cunning is a distinguishing ingredient in certain kinds of crime, nerve in others. It was nerve that gave tone to the dishonest exploits of Kobuke Nitchi, who was indicted in the forenoon and sentenced in the afternoon of yesterday for forgery. He pleaded guilty to the indictment and was sentenced by Judge Dole to be imprisoned at hard labor for two years.

It was forgery "double twilled, double filled and double struck in the weaving," as the old saying goes, which Nitchi committed. He was walking along a Hilo street when he picked up a letter addressed to another Japanese, Nitchi opened the letter and found it was from a brother of the man addressed, living at a town on the Pacific Coast. The letter was urging the brother in Hawaii to emigrate to the place where the writer dwelt.

Nitchi answered the letter himself, signing the name of the other Japanese. He told a hard luck story of times in Hawaii to show why he, the pretended brother, could not find the passage money wherewith to join the other in California. If his brother would but send him the means he would gladly go.

Then Nitchi watched for the mails from overseas and was rewarded by receiving delivery of the reply to his forged letter addressed to the other Japanese whom he was enterprisingly personating in a clerical capacity. Opening the missive he found it to enclose a postal money order for \$100. To this he forged the signature of the "person named in my letter of advice," receipting to the United States for the hundred dollars, and the amount was handed out to him through the pay wicket.

But the long arm of Federal justice darted from behind the screen and snatched the nifty Kobuke Nitchi to the bar. All his nerve may be needed in the ensuing two years to brace his system for toil in the Honolulu road quarries.

amendments to the bill, which the Governor had by letter requested him as chairman of the Finance committee to propose. He read the amendments, which appear below.

Mr. Achi wished to have the amendments, with the bill, referred to a committee, as there was danger of "getting all mixed up."

Mr. Dickey found a clerical error in designating one of the 1903 bills to start with, and the matter was referred to the Finance committee.

Mr. Isenberg was granted leave of absence for the rest of the week.

At 11:08 the Senate took recess until 2 o'clock.

AFTERNOON SESSION.

Mr. McCandless presented a report of the Finance committee on House bill No. 1, the salary appropriations, recommending various amendments with which the bill should pass.

Mr. Dickey said there was one little item in that bill he wished to have changed, therefore he moved the report be considered with the bill. Carried. Mr. Dickey said a great injustice had been done in reducing the salary of the keeper of kerosene and gunpowder, Honolulu, from \$125 to \$109 a month. The keeper was formerly paid \$150 a month, out of which he had been paying a helper. He moved to insert a new item of \$25 a month to the helper.

Then the clerk pointed out that the salary was \$125 in the bill, the \$109 having been a mistake made on a former reading. Mr. Dickey withdrew his amendment and moved that the amendments suggested by the Finance committee be adopted. Carried.

Mr. Woods moved to amend the pay of Honolulu sanitary inspectors by making it \$75 each, the total amount being left unchanged. Carried.

On motion of Mr. Brown the bill for a third time passed third reading on a roll call vote. Mr. Kalua of Maui giving the only negative vote.

THE AMENDMENTS.

The title is amended to read, "An Act providing for salaries and pay of employees of the Territory."

Section 5 is changed to read: "All sums appropriated by Act 16 of the extra session of 1903, other than those for items for which appropriations were made under Act 17 of said extra session, are hereby reappropriated for the period commencing with the first day of January, 1904, and ending with the thirtieth day of June, 1904, and all warrants issued and payments made under said Act 16 are hereby ratified and confirmed."

A new section is added, thus: Section 6. This Act shall take effect on the first day of July, 1904, except Section 5 thereof, which shall take effect on the date of its approval."

NEWS FROM HOUSE.

After a short recess the Senate received two communications from the House announcing its action on a number of bills. Senate bill No. 6, amending Act 16 of the session laws of 1903, had passed third reading. Also, Senate bill No. 7, amending Act 18 of the extra session of 1903. Also, Senate bill No. 8, amending Act 17 of the extra session of 1903.

The House had concurred in the amendments made by the Senate to House bill No. 4, amending the law relating to the courts.

At 5:30 the Senate adjourned till 10 o'clock the following morning.